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April 19, 1983

Mr. Benjamin C. Adams, Commissioner
Department of Employment Security
32 South Main Street
Concord, New Hampshire 03301

Re: Dupont v. Omni Spectra, Inc. and
the State of New Hampshire

Dear Commissioner Adams:

By letter dated April 11, 1983, you requested this office to file an appeal to the New Hampshire Supreme Court from the decision of the Appellate Division, rendered April 8, 1983 in the above-captioned action. More specifically, you requested that we file this appeal on behalf of the Department and yourself, as Commissioner, under RSA 282-A:67 (1981 Supp.), as you believe the decision of the Appellate Division was unlawful in several respects, which you enumerate in your letter. As more fully explained below, RSA 282-A:67 (1981 Supp.) does not authorize an appeal by the Department or the Commissioner under these circumstances.

RSA 282-A:67,I (Supp. 1981) (Judicial Review) provides, in pertinent part, that:

An interested party who has exhausted all administrative remedies within the department and who is aggrieved by a final decision of the appeal tribunal may appeal that decision to the Supreme Court....



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The only definition of "interested party" which appears in RSA 282-A is set forth in RSA 282-A:42, III (Supp. 1981), which provides:

INTERESTED PARTY. "Interested party" means the claimant, his last employing unit or employer, any employer whose account was or may be charged with benefits paid and any employing unit or employer whenever the claimant's reason for leaving their employ may be material to his claim.¹

This definition makes explicit that neither the Department nor the Commissioner is an "interested party" in the statutory procedure prescribed for the initial benefit claim, or the appellate procedures following a ruling by the Department on that claim. See also RSA 282-A:66 (Supp. 1981) (distinguishing between "interested party" and "the commissioner," for purposes of appeal from decision of the appeal tribunal); RSA 282-A:67, I (Supp. 1981) (distinguishing between "interested party" and "the State" for purposes of participation in a Supreme Court appeal).

We further note that the judicial review provided by RSA 282-A:67 (Supp. 1981) is exclusive. See RSA 282-A:68 (Supp. 1981). Accordingly, the April 8, 1983 decision of the Appellate Division cannot be challenged by the Commissioner or the Department through writ of certiorari or otherwise.

Should, however, the employer appeal this decision, the State is allowed to "participate as a party in the appellate proceedings" before the Supreme Court, and this office would, of course, represent the Department if it determined that such intervention would be appropriate.

¹This definition is identical to that set forth in former RSA 282:5(B)(1)(c).

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If you have any questions regarding the above, please do not hesitate to contact this office.

Very truly yours,

Martha V. Gordon
Assistant Attorney General
Division of Legal Counsel

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